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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: OCT 0 6 2011 OFFICE: TEXAS SERVICE CENTER

[redacted]

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences and as a member of the professions holding an advanced degree. The petitioner seeks employment as a civil engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner claims eligibility for classification as an alien of exceptional ability in the sciences. The record readily establishes, however, that the petitioner is a member of the professions with progressive post-baccalaureate experience equivalent to an advanced degree. A separate determination regarding the petitioner's claim of exceptional ability would be moot; it would occupy significant space in this decision, without affecting the ultimate outcome thereof. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on December 2, 2009. In an introductory brief, counsel stated:

> Petitioner demonstrates a unique ability to design, configure, and direct execution of restorations in connection with historic structures, as well as experience with modern structures, all coupled with an eye for special detail and refinement instrumental for meeting efficiency and cost effectiveness. While the pertinent projects do not number many, one ought to keep in mind that Petitioner holds lengthy experience involving complicated Civil Engineering where many of these projects, even those which did not reach completion, consume many months of time.

Counsel cited "a real, nation-wide need to restore prestigious and culture-rich historical buildings that also invite tourism and an understanding of American history." Counsel stated that the labor certification process, which requires a permanent job offer from a single employer, "would severely cripple" the petitioner's ability to "offer [h]is services to many groups simultaneously in need of his talents."

Four letters – one from a client, and the other three from the petitioner's former employers – accompanied the petitioner's initial filing. Said [redacted] general manager and owner of [redacted] stated:

> [The petitioner] carried out quite a few construction projects of variable types that varies from [a] conventional large apartment complex building to a large community school. . . . One project that comes to mind . . . was that of a series of large concrete stations that made the foundation for the electric power Generators in Tripoli. That was one of our firm's biggest and most challenging projects given its complexity and safety measures that were required. [The petitioner] demonstrated outstanding performance in handling major projects related to my firm. Given the fact that [the petitioner] was always detail oriented and spent extra time and energy to recalculate every step, that was our saving grace in preventing any mistakes and discovering deviations from the original plan early.
>
> Thanks [to] his dedicated and meticulous work, we were able to rectify the problem and change both the design and concrete/steel layout to withstand the unforeseen challenges.

[redacted] stated:

> [The petitioner] was hired as a project engineer to oversee the progress of contract jobs in Beirut, in and around the city.
>
> Shortly after he started his job, [the petitioner] rapidly impressed everyone in his division by his endless dedication to the job and absolute loyalty in which he approached every assignment. . . . His extensive knowledge and experience with contracting soon made him the man to go to for consultation or whenever an issue occurred on site. . . .

> [The petitioner's] outstanding work was demonstrated in [redacted] This project involved building the school's sports complex. The sports complex consisted of an Olympic pool, squash courts, tennis courts, mini-football courts, indoor and outdoor volleyball courts and an Olympic running track. The project had very strict time constraints and needed to be completed in less than eight months. [The petitioner's] primary assignment was to oversee the day to day progress and report to the company. [The petitioner] not only did a remarkable job submitting weekly reports but he excelled in resolving onsite problems and remarkably completed the project in seven months. . . . [I]n the process of tiling the indoor swimming pool, the subcontractor had a hard time cutting the pieces to the specified dimensions as designed by the architect. [The petitioner] took the measurements and calculated them into AutoCAD to redesign the location of the tiles and modified the tile sizes, [which] simplified the cutting process and saved the company three days of work, in addition to eliminating the architect fee to modify the prints.
>
> It is hard for me to talk about [the petitioner's] work with Gauche [*sic*] without mentioning the astonishing job he did on the renovation of the Oudaime Building in Jounieh. [The] Oudaime Building is a hundred fifty year old structure[,] part of the historic district in downtown Jounieh. It marks as one of the oldest buildings standing prior to the Lebanese Independence. The renovation consisted of renewing the roof and the outside walls keeping the historic look and architecture in a one year time frame. [The petitioner] oversaw the day to day operations and was able to spot a major mistake in the prints provided by the architect. The architect's prints for the walls showed that they were right angled . . . [but] the walls were in reality skewed. After discussion with the architect, the prints were redesigned taking into account [the petitioner's] findings.

[redacted] (no specific location provided), stated:

> [T]he restoration of our 125 year old convent . . . was extremely tedious and challenging in so many ways. . . . This Convent represents a very important historic building and has an enormous religious meaning to our history. We did not know how to approach the renovation without changing its character or modifying it from its original design. [The petitioner] took on this extremely challenging task and demonstrated talent beyond belief in restoring the convent to a shape and structure that was so true to its original design.

[redacted], stated:

> I have found [the petitioner] to be extremely reliable and dependable in carrying his job requirements. . . .
>
> The one characteristic of [the petitioner] that has gained him the respect of his colleagues and many professional engineers that he has worked with is his astute problem solving skills. [The petitioner] is extremely detail oriented and meticulous with his reporting. It is his ability to capture and know the details of construction that helps him to develop solutions to potential problems that may arise on a construction site. One example [that] comes to mind involves a conflict that arose while we were constructing a thirty-five food deep (35 ft.) foundation of a proposed forty (40) storey building in New York City. The adjacent property owner had expressed concern about his building settling subsequent to the seventeen (17ft.) feet of underpinning. Upon investigation to see if this claim was valid, [the petitioner] had full documentation of every work detail in his day-to-day logs and sketches as to what work was performed with the corresponding location at the site. With that accurate and detailed information, the activity/equipment that generated the situation was identified and alternative means to perform the work were implemented.

The witnesses did not indicate that the petitioner specializes in restoration or preservation of historic structures. Rather, they described a range of projects, from renovation of century-old buildings to the construction of a new skyscraper.

On April 6, 2010, the director instructed the petitioner to submit further evidence to meet the guidelines published in *Matter of New York State Dept. of Transportation*. The director stated: "While the petitioner has been able to provide some specific information about particular projects that he has undertaken, he has not shown that these activities distinguish him from other civil engineers to such an extent that he qualifies for the special additional benefit of a national interest waiver."

In response, the petitioner submitted four more witness letters. One letter, attributed to an official of Jounieh Municipality (the signature is not fully legible), discussed the historical significance of the Ouidame House and thanked "the company, which completed the renovation work on the Ouidame House." The letter praised the quality of the work but did not mention the petitioner specifically.

[redacted] stated that the petitioner "was the lead engineer responsible for the execution of some of our main projects," including the Ouidame House renovation. [redacted] stated that the petitioner was on vacation when a wall collapsed, leading the company to suspend work until the petitioner returned, at which time the petitioner's "efforts led to a settlement that helped minimize the financial loss of the company while preserving the safety of the neighbors and workers at the same time. It was under his supervision that the renovation work was completed and achieved on time."

[redacted] in his second letter, stated that the petitioner's "astute problem solving skills and meticulous attention to details made him an invaluable asset while developing the preliminary construction logistics" for renovation projects "in the Metropolitan Museum of Art in New York City." [redacted] observed that the renovations had to take place without interrupting public accessibility to the museum, and in the controlled climate required for the art works (including a waterproofing system during the installation of a skylight).

[redacted], stated:

> [The petitioner] has been working as a freelance worker for me since . . . January, 2010.
>
> [The petitioner] does field work for me, he measure[s] houses, stores business [*sic*], and prepares the floor plans necessary for me. . . . I am dependant on [the petitioner] to help me with my business so that we can grow my business and do a large volume of work together.
>
> Sadly to say I have hired many other people in the past and I have nothing as good to say about them.
>
> [The petitioner] is the one I really trust and if he is not here to help me with my business, most likely I will not be hiring anyone else. It's pointless to have a draftsman that does a drawing for me and having to almost redraw the entire drawing.

The director denied the petition on May 25, 2010, acknowledging the substantial intrinsic merit of the petitioner's occupation, but finding that the petitioner had not established national scope. The director repeated the assertion that details about individual projects fail to show that the petitioner qualifies for the waiver.

On appeal, counsel states that the petitioner has shown "a unique ability to design, configure, and direct execution of restorations in connection with historic structures, as well as experience with modern structures, all coupled with an eye for special detail and refinement instrumental for meeting efficiency and cost effectiveness." Counsel repeats the claims that, if the job offer requirement holds the petitioner to a single employer, he will be unable to work for several different employers simultaneously. Much of the rest of the appellate brief consists of quotations from witness letters and assertions regarding the petitioner's skill as a civil engineer.

The preservation of national landmarks is in the national interest. Such structures are historically important and offer an economic benefit at tourist attractions. Nevertheless, it cannot suffice for the petitioner simply to assert that he qualifies for the waiver because he intends to assist in historic preservation efforts. The petitioner has repeatedly cited Ellis Island as an example of a landmark in need of renovation, but the record contains no evidence that the National Park Service, which

currently maintains Ellis Island as part of the Statue of Liberty National Monument, has expressed any interest in employing the petitioner for that purpose.

Additionally, the petitioner's career to date has not focused exclusively or even, it seems, primarily on historic structures. Rather, the record shows a variety of construction jobs, some involving completely new buildings. In effect, the petitioner seeks the national interest waiver because his future work as a civil engineer may occasionally involve historic preservation. Such speculation rests on unpredictable factors, and is not a reliable basis for the permanent immigration benefit that the petitioner seeks.

Also, while the intrinsic merit and national scope of historic preservation are not in dispute, there is no blanket waiver for civil engineers. The petitioner still must show that he offers a greater prospective benefit in that area than qualified United States workers. All the petitioner has offered in that area is a handful of anecdotal witness statements, stating that the petitioner has successfully handled such projects in the past.

The director did not dispute that the petitioner is a skilled and successful civil engineer. By statute, however, exceptional ability – defined as "a degree of expertise significantly above that ordinarily encountered" – does not guarantee or imply eligibility for the national interest waiver. The petitioner may desire greater flexibility than a single employer can offer, but even if he were to pursue classification through an employer-filed petition with a labor certification, he would be able to change employers or engage in freelance work after becoming a lawful permanent resident. The job offer/labor certification requirement does not permanently lock an alien into a particular job for the rest of his or her career.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.